

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**In the Matter of Licenses 11395 and 11396
(Applications 16186 and 16187)**

Merced Irrigation District

ORDER APPROVING TEMPORARY URGENCY CHANGE

SOURCE: Merced River

COUNTIES: Mariposa and Merced Counties

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On April 22, 2015, Merced Irrigation District (MID) filed Temporary Urgency Change Petitions (TUCP) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of changes to MID's water right Licenses 11395 and 11396, pursuant to California Water Code section 1435. With the petitions, MID has requested the State Water Board approve temporary changes to water right Licenses 11395 and 11396 for temporary relaxation of minimum instream flow requirements in the Merced River, minimum pool requirements in Lake McClure, and October pulse flow release requirements.

The specific changes requested under the TUCPs are as follows:

A. Proposed changes to both Licenses 11395 and 11396:

- 1) Change MID's April and May minimum instream flow requirements at Shaffer Bridge to be 40 cfs instantaneous flow, rather than 60 cfs instantaneous flow; and
- 2) Relaxation from the minimum pool requirement of 115,000 af at Lake McClure. This allows continued water diversions to the Lake Don Pedro Community Services District (LDPCSD) for public health and safety needs when Lake McClure is below the minimum pool requirement of 115,000 af.

B. Proposed change to only License 11395:

Relaxation from providing a 12,500 af pulse flow release during the month of October 2015. The October release may be partially or fully implemented as agreed upon by California Department of Fish and Wildlife (CDFW) and MID if hydrology conditions within the Merced River watershed and storage in Lake McClure improve by October 2015.

Pursuant to Water Code section 1440, temporary urgency changes can be effective for a maximum of 180 days from the date of the approved Order.

2.0 CALIFORNIA CURRENT DROUGHT CONDITIONS

2.1 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions, and on April 25, 2014, he further proclaimed a Continued State of Emergency. In addition to two drought declarations issued in 2014, the Governor has also issued Executive Order B-29-15 on April 1, 2015 to save water, increase enforcement of water laws, streamline government responses to the drought, and invest in new water. It references that the orders and provisions of the January 17, 2014 Proclamation and April 25, 2014 Proclamation are still in effect, unless otherwise modified.

The Governor's April 1, 2015 Executive Order states, " California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins [and] the severe drought conditions continue to present urgent challenges including: drinking water shortages in communities across the state, diminished water for agricultural production, degraded habitat for many fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta." The April 1, 2015 Order also states, "a distinct possibility exists that the current drought will stretch into a fifth straight year in 2016 and beyond [and] new expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought."

2.2 Current Hydrologic Conditions in the San Joaquin River Basin

Facing a fourth consecutive dry year, the last two years of which have been critically dry, the State of California, and the Merced River Watershed in particular, remains in the midst of an unprecedented drought. The Department of Water Resources' (DWR) Bulletin 120 publication for April 1, 2015, Water Supply Conditions in California, identifies that for the San Joaquin River Basin, Water Year 2015 is preliminarily classified as a critical year type according to the San Joaquin Valley Water Year Type Index (60-20-20). In addition, Bulletin 120 indicates that the forecasted unimpaired runoff into Lake McClure at a 90 percent exceedance is 65,000 af during April through July, as compared with an average runoff of 636,000 af from April through July; and for the entire 2015 Water Year, the forecast at a 90 percent exceedance is 131,000 af, as compared with an average water year runoff of 1,007,000 af. At a 50 percent exceedance, the unimpaired runoff forecast during April through July is 90,000 af, or 14 percent of the average runoff from April through July; and the forecast for the 2015 Water Year is currently 156,000 af, or 15 percent of average at a 50 percent exceedance. However, the National Oceanic and Atmospheric Association's California Nevada River Forecast Center indicates a less favorable forecast. The April through July forecast at a 50 percent exceedance level is approximately 56,000 af, and at a 90 percent exceedance forecast is approximately 40,200 af.

The continued drought predictions have materialized in early 2015 with the driest January in recorded state water history and very little precipitation in February, March and April. In addition, water storage levels are extremely low in MID's Lake McClure, where the reservoir is currently at about 97,640 af or 9.5 percent of capacity as of April 20, 2015. Absent significant changes in hydrology, 2015 is on track to become one of the driest years in recorded history in California and in particular in the San Joaquin Valley.

2.3 MID's Actions in Response to the Drought

In April 2014, MID petitioned for and received a Temporary Urgency Change Order approving a decrease in the minimum instream flow requirement and a reduction in the pool requirement from 115,000 AF to 85,000 AF. The temporary reduction in the minimum pool requirement assisted in MID's efforts to optimize the benefits of its limited water supply. These changes initially conserved water in Lake McClure which provided additional flows during Spring 2014 for out-migrating fish, provided MID customers with an additional,

incremental surface water supply during the irrigation season, and provided fish species in the Merced River with cooler river water temperatures throughout MID's irrigation season as compared to the condition absent the changes authorized by the State Water Board and other agencies.

Following the period authorized by the State Water Board for MID's 2014 TUCP, and in addition to the proposed changes, MID has made previous efforts to conserve water and best manage the storage in Lake McClure for multiple beneficial uses, including fish and wildlife. The following were among the many efforts undertaken by MID:

1. In October 2014, MID submitted a request to DWR to reduce Davis-Grunsky flows in the Merced River between November 1, 2014 and March 31, 2015, along with a waiver to reduce or waive the 2014 October Pulse flow. Ultimately, MID was not able to secure this request for relief.
2. In late January 2015, MID renegotiated approval to reduce Davis-Grunsky flows with the CDFW and DWR for the winter of 2015. MID received approval on February 6, 2015, allowing flows at Shaffer Bridge to be reduced from a minimum of 180 cfs to a minimum of 100 cfs.
3. MID has continued to diligently coordinate with Cowell Agreement Diverters and other water appropriators/riparian users on the Merced River. As a result, MID has been providing irrigation personnel to coordinate planned diversions by these diverters and adjust releases from Lake McClure and Lake McSwain to the Merced River accordingly. Coordination with these water users has been ongoing.
4. MID's Board has opted to allow the meager inflow to Lake McClure to be diverted to storage rather than allowing the inflow to bypass Lake McClure that could have been diverted downstream under MID's pre-1914 water rights. On February 24, 2015, MID's Board indicated that it expects no surface water diversions to MID's landowners during 2015, unless significant changes in hydrology are realized at New Exchequer Dam.

Despite all efforts to conserve water in storage in Lake McClure, storage levels remain historically low and additional action is necessary to prevent Lake McClure from potentially reaching dead pool before the end of this year. If the surface water elevation in Lake McClure was to be at or below the penstock to New Exchequer power plant, the Merced River downstream from New Exchequer Dam could go dry.

3.0 BACKGROUND

3.1 Substance of License 11395

License 11395 was issued to MID on August 15, 1983, pursuant to Application 16186, which has a priority date of December 23, 1954, and the license was subsequently amended on June 20, 2003. License 11395 allows diversion to storage of up to 605,000 af of water per annum from the Merced River from October 1 of each year to July 1 of the succeeding year. The points of diversion under the license are New Exchequer Dam (Lake McClure) and McSwain Dam. McSwain Dam also serves as a point of rediversion. There are three additional downstream points of rediversion: 1) Merced Falls Diversion Dam for Northside Canal; 2) Crocker-Huffman Diversion Dam for Main Canal, Trout Farm and Salmon Spawning Channel; and 3) Duck Slough. The water may be used for the following purposes: irrigation, domestic, recreational, fish and wildlife protection and enhancement, and fish culture.

License 11395 allows the following: irrigation of 131,953 acres within a gross area of 154,394 acres within the boundaries of MID, 9,418.6 acres within the boundaries of El Nido Irrigation District, and a 55-acre golf course with the service area of Sierra Highlands Water Company; domestic use at home sites within the service area of Sierra Highlands Water Company, at home sites and recreational facilities adjacent to Lake McSwain and Lake McClure including McClure Point, McClure Boat Club and Barrett Cove, and in 2,010 acres of South Shore Club, an area within LDPCSD; fish culture at MID's salmon spawning channel and at a privately

operated trout farm; and recreational use and fish and wildlife enhancement in and around lakes McClure and McSwain.

One of the conditions in License 11395 requires that MID provides 12,500 af of additional water in the month of October in all years as measured above its requirement of 2,350 af or 3,124 af defined in the Federal Energy Regulatory Commission (FERC) license for the Exchequer Merced River Project.

3.2 Substance of License 11396

License 11396 was issued to MID on August 15, 1983, pursuant to Application 16187, which has a priority date of December 23, 1954. License 11396 allows diversion of water from the Merced River as follows: direct diversion of up to 1,736 cubic feet per second (cfs) from January 1 to December 31 of each year; and diversion to storage of up to 605,000 af per annum from October 1 of each year to July 1 of the succeeding year. The points of diversion under the license are New Exchequer Dam (Lake McClure) and McSwain Dam. McSwain Dam also serves as a point of rediversion. The water can be used for hydropower generation at Exchequer Power Plant and McSwain Power Plant.

3.3 MID and CDFW 1959 Agreement

Licenses 11395 and 11396 also both contain the following term, which MID seeks to modify pursuant to the TUCPs:

This license is subject to the terms of provisions 1, 2, 3, and 4 of the stipulation and agreement between Merced Irrigation District and California Department of Fish and Game (now CDFW), dated October 8, 1959, as received into evidence as Fish and Game Exhibit 1 in the hearing of Applications 16186 and 16187.

Provisions 1-4 of the CDFW 1959 Agreement are as follows:

- I. for the protection, propagation and preservation of fish and wildlife and in partial compensation for the loss by inundation of valuable spawning beds and large natural trout, salmon, and warm water fisheries above the respective dam sites caused by the construction of said dams and the formation of reservoirs behind said dams, MID shall at all times bypass into the natural stream bed of the Merced River immediately below Bagby Dam a minimum flow of 20 cfs whenever more than $\frac{1}{4}$ mile of stream is exposed by lowering the water level of Exchequer Reservoir.
- II. for the protection, propagation, and preservation of fish and wildlife, MID shall bypass or release into the natural stream bed of the Merced River immediately below MID's Exchequer Dam, except in emergencies or unless otherwise provided, a minimum flow of 50 cfs at all times during non-dry years and 25 cfs during dry years; provided that during the period October 16 through December 31 of each year, all releases from Exchequer Dam shall be made insofar as possible from a center line elevation of 485 feet or lower.

For the purposes of this agreement, a dry year is defined as any twelve-month period following a forecast in the April 1 bulletin of the California Department of Water Resources, and adjusted in accordance with the May 1 bulletin, in which the unimpaired runoff for the station at Exchequer is less than 450,000 af for the period April 1 through July 31.

An emergency is defined as an occurrence, usually of short duration, such as a flood condition, a mechanical or other operational failure beyond control of MID, which would prevent compliance with flow and operational terms matter of this agreement.

- III. for the protection, propagation and preservation of fish and wildlife, MID shall bypass or release into the natural stream bed of the Merced River immediately below MID's Snelling Dam during the periods hereinafter specified sufficient water to maintain the following minimum flows at Shaffer Bridge

(Montpellier Road crossing about five miles upstream from Cressey):

(1)

Period	Non-Dry Year (cfs)	Dry Year (As Defined Herein) (cfs)
June 1 through October 15	25	15
October 16 through October 31	75	60
November 1 through December 31	100	75
January 1 through May 31	75	60

(2) Flows below Snelling Dam shall not be increased by more than double or reduced by more than ½ in any one-hour period.

IV. MID shall maintain the water surface elevation in its reservoirs as high as possible, consistent with operational demands throughout the period April through October each year, and shall maintain minimum pools of the following capacities for operation of the project and maintenance of fish and wildlife:

Bagby Reservoir	30,000 af
Exchequer Reservoir (Lake McClure)	115,000 af
Snelling Reservoir	20,000 af

3.4 Curtailment

On April 23, 2015, the State Water Board issued curtailment notices to all post-1914 water right holders within the San Joaquin River watershed until further notice. The post-1914 water rights curtailed include permits, licenses, registrations and certificates issued by the State Water Board after 1914 within the San Joaquin River watershed. Although MID’s Licenses 11395 and 11396 are affected by the curtailment notice, Division staff have evaluated the requested changes in the TUCPs and determined that they are exceptions to this curtailment notice. MID’s requested changes under the TUCPs are exceptions to the curtailment because: 1) the requested beneficial uses are for previous stored water prior to the curtailment notice; and 2) the direct diversion under License 11396 is for hydroelectric generation use and all water diverted is returned to the same stream system. However, MID must bypass all inflow into the reservoirs that are covered under its post-1914 water rights at all time during the curtailment.

4.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

On April 7, 2015, MID’s Board of Directors adopted a resolution approving a Notice of Exemption (NOE) for actions necessary to obtain emergency regulatory relief for benefit of LDPCSD from minimum flow requirements and October pulse flow release requirement. On April 13, 2015, MID issued a NOE for temporary emergency relief for the benefit of LDPCSD. On May 6, 2015, MID issued an updated NOE for temporary emergency relief from minimum flow requirements in the Merced River for April and May 2015, temporary emergency relief from the 115,000 af minimum pool requirements in Lake McClure for the benefit of LDPCSD, and temporary waiver of Merced River pulse flow requirement during the month of October 2015. MID claimed that the proposed project is statutorily exempt from CEQA under Pub. Resources Code § 21080 subd. (b)(3) & (4), Cal. Code Regs., tit. 14, §15061(b)(3) and §15269 subd. (a), (b) & (c), and categorically exempt under Cal. Code Regs., tit. 14, §15301 et seq.

MID has indicated that if water storage is not conserved, water will not be available for human consumption, or to protect fish and other species or their habitats in the Merced River. Catastrophic impacts to agriculture within MID and in Merced County will occur this year, which could be especially devastating for permanent crops and livestock. This threat will continue to grow as dry conditions continue or intensify through the

following months. In addition, MID indicated that the current conditions pose an increasingly imminent threat to health and human safety in Merced and Mariposa Counties. LDPCSD instituted severe water rationing at the 50% level, and is extremely concerned about its water supplies for its residents this year while Lake McClure is at historically low levels. LDPCSD has continued to take water from Lake McClure given its health and safety concerns, but its right to do so is subject to MID's water right restrictions contained in License 11395. Approval of the changes proposed under the TUCPs will ensure that LDPCSD may continue to divert water from Lake McClure while its water levels are below minimum pool requirements.

The State Water Board has considered the environmental documentation and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The State Water Board has also considered its public trust responsibilities. The State Water Board will file a NOE within five days from the issuance of an order.

5.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITION

The State Water Board will issue and deliver to MID as soon as practicable, a notice of the temporary urgency change order pursuant to Water Code section 1438(a). Pursuant to Water Code section 1438(b)(1), MID is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion lie. The State Water Board will post the notice of the temporary urgency change and the TUCP (and accompanying materials) on its website. The State Water Board also will distribute the notice through an electronic notification system. Pursuant to Water Code section 1438(a), the State Water Board may issue a temporary urgency change order in advance of the required notice.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest.
(Wat. Code, § 1435, subd. (b)(1-4).)

6.1 Urgency of the Proposed Changes

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented . . ." However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

MID states an urgent need for the temporary changes exists in order to conserve critical storage in Lake McClure for use later in the year and into next year if drought conditions persist. As of April 20, 2015, the storage in Lake McClure is lower than the minimum pool requirement of 115,000 af at approximately 97,640 af or 9.5 percent of capacity, which corresponds to a water surface elevation of approximately 613 feet above mean sea level (amsl). The water surface elevation of Lake McClure reached a low of approximately 585 feet amsl in February 2015. On March 9, 2015, LDPCSD adopted Resolution 2015-15. LDPCSD Resolution 2015-15 states, "it is estimated that the floating pump station will not be able to pump water when the water level in Lake McClure falls below 560 feet, and the quality of remaining water at any elevation below 580 feet is unknown and questionable in its suitability for pumping, treatment, and use". LDPCSD Resolution 2015-15 mandates a 50% water use reduction by all water users as compared to 2013 water use. This resolution will ensure that water conservation is achieved consistently during the term of the approved petition.

This requested relaxation to allow LDPCSD to continue diversions from Lake McClure while storage is below the minimum pool requirements is to immediately provide LDPCSD a solution to potential drinking water shortage in its domestic water supplies. Currently, LDPCSD does not have an alternate source of water. Relaxation from the minimum instream flow requirements, including the 12,500 af October pulse flow release, will provide LDPCSD with continued access to a water supply from Lake McClure. The proposed changes are anticipated to assist MID in optimizing the available surface water supplies during the extreme dry conditions and conserve stored water in Lake McClure to provide instream flows and diversions to LDPCSD for public health and safety needs.

The Governor's April 1, 2015 Executive Order directs the State Water Board to impose restrictions resulting in a 25% savings in potable urban water usage through February 2016. On May 5, 2015, the State Water Board adopted emergency regulations. While the requirements of such rulemaking will not be known with certainty until approved by Office of Administrative Law and in effect, the regulations approved by the State Water Board appear applicable to small water suppliers, such as LDPCSD. The regulations for smaller urban water suppliers, defined as any distributor of a public water supply, whether publicly or privately owned and including a mutual water company, but not meeting the definition of urban water suppliers in Water Code section 10617, is to either limit the number of days that outdoor watering of turf and ornamental landscapes is allowed to no more than two days per week or to reduce their total potable water production by 25 percent as compared to 2013. For parties that do not elect to the limitation on watering, they shall submit a report by December 15, 2015, on a form provided by the Board, that includes the total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013.

In an effort to not require duplicative requirements, this Order allows MID to report on LDPCSD's compliance with the emergency regulations, should they be approved and in effect. Alternatively, if there is not a regulatory framework applicable to LDPCSD, a water demand reduction plan shall be prepared requiring conservation. In the event that LDPCSD is required to comply with emergency conservation regulations, the frequency of reporting requirement for such regulations is not sufficient to allow oversight of meaningful conservation during the period of this urgency change. Thus, reporting is required on a monthly basis for this urgency change.

6.2 No Injury to Any Other Lawful User of Water

The proposed relaxation of instream flow and minimum pool requirements will not injure any other lawful user of water and may instead benefit other downstream users by conserving the storage water in Lake McClure. These downstream diverters include other water appropriators/riparian users on the Merced River as well as diverters known as the Cowell Agreement Diverters established under the January 17, 1926 Cowell Agreement. The proposed change of the minimum instream flow requirement at Shaffer Bridge during April and May 2015 from an instantaneous flow of 60 cfs to an instantaneous flow of no less than 40 cfs will have minimal effect to any lawful user of water during this period. Shaffer Bridge is located approximately 23 miles downstream from McSwain Dam (a 9,000 af afterbay to New Exchequer Dam). Diversions through this 23-mile reach can result in fluctuations of Merced River flows, and as a result, MID has to release excess

flow to meet the flows at Shaffer Bridge. MID will commit to an instantaneous flow of not less than 40 cfs at Shaffer Bridge during this two-month period which will ensure there will be no injury to others. Under the current drought conditions, the Merced River downstream from New Exchequer Dam may go dry if the drought continues and the surface water elevation at Lake McClure was to be at or below the penstock to New Exchequer power plant (dead pool water level in Lake McClure). The proposed changes would allow MID to manage flows at Shaffer Bridge with greater flexibility and conserve the storage water in Lake McClure to provide for continued diversions of water. In addition, the surface water proposed to be made available to LDPCSD by the temporary relaxation to the minimum pool requirement will assist to mitigate an emergency water supply condition affecting LDPCSD.

In light of the above, the State Water Board finds in accordance with Water Code section 1435, subdivision (b)(2) that the proposed changes may be made without injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

6.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

MID is currently coordinating with CDFW and Federal fishery agencies (U.S. Fish and Wildlife Service and the National Marine Fisheries Service) to protect fish, wildlife, or other instream beneficial uses from any unreasonable effects. CDFW has provided a letter to the Division on April 23, 2015 offering their concurrence with MID's proposed reduced instream flow and requested relaxation from the October pulse flow release requirement and minimum pool requirements. To address MID's urgent request to secure storage water to meet LDPCSD's health and safety needs, CDFW has agreed, with conditions included in this order, to MID's proposal to reduce the minimum instream flow and minimum pool requirements pursuant to the CDFW 1959 Agreement. CDFW also conditionally approves MID's request for relaxation from the October pulse flow release requirement with the final approval dependent upon CDFW's written approval of the request issued by October 1, 2015.

CDFW indicated in the April 23, 2015 letter that due to the current and continuing drought conditions, the water temperature levels in the lower Merced River downstream of New Exchequer Dam are expected to exceed thresholds that maintain rainbow trout in good condition. As a result, CDFW will conduct water temperature and fish abundance monitoring in the lower section of the Merced River (i.e. Crocker-Huffman Dam to Snelling Road Bridge reach) and will conduct rainbow trout fish rescues when temperatures exceed 20 °C (i.e. the seven day average of the daily maximum), similar to that was done in 2014. CDFW recommends that MID conduct the same level of monitoring and fish rescue responsiveness for the reach of the lower Merced River located between McSwain and Crocker-Huffman Dams given the higher water temperature levels that are expected in this reach of the river. On April 29, 2015, MID's email response to CDFW's monitoring and fish rescues recommendation indicates that MID does not have the funds nor the expertise to undertake a fish rescue mission on the Merced River. However, MID may provide labor assistance within its expertise, if the material were made available by CDFW. MID is also willing to make requested water operation changes per recommendations from CDFW and approval by MID for the purpose of guiding fish through the anticipated flows. Although CDFW does not require MID to conduct fish monitoring and rescues in the reach of the lower Merced River located between McSwain and Crocker-Huffman Dams, the Division encourages MID to work closely with CDFW for any necessary monitoring or fish rescues in order to prevent the proposed changes from causing any unreasonable effect upon fish, wildlife, or other instream beneficial uses in the Merced River.

The requested temporary urgency changes for relaxation from instream flow requirements, October pulse flow release requirement, and minimum pool requirements under MID's Licenses 11395 and 11396 may benefit fish and wildlife by conserving and best managing the storage water in Lake McClure and support instream releases for beneficial uses (including fish and wildlife beneficial uses) in the Merced River throughout 2015, and into 2016, under the current and continuing severe drought conditions.

In light of the above, and as conditioned in the Order, the State Water Board finds in accordance with Water Code section 1435, subdivision (b)(4) that the proposed changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.

6.4 The Proposed Change is in the Public Interest

The proposed temporary urgency changes under the MID's Licenses 11395 and 11396 have been developed in coordination with multiple agencies to maximize benefits of MID's water supply while providing protection to fish in the Merced River. The proposed reduced instream flow requirements, including the 12,500 af October release, and the relaxed minimum pool requirements are intended to allow MID to maintain flow in the Merced River throughout 2015, and into 2016 if drought conditions persist. These proposed changes are also intended to authorize continued diversions by LDPCSD from Lake McClure in order to meet minimum public health and safety needs.

In light of the above, the State Water Board finds in accordance with Water Code section 1435, subdivision (b)(4) that the proposed changes are in the public interest, including findings to support change order conditions imposed to ensure that the changes are in the public interest. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435. The State Water Board concludes that, based on the available evidence:

1. The right holder has an urgent need to make the proposed changes;
2. The proposed changes, with conditions set forth in the Order, will not operate to the injury of any other lawful user of water;
3. The proposed changes, with conditions set forth in the Order, will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The proposed change is in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the petitions filed by MID for a temporary urgency change in Licenses 11395 and 11396 are approved and effective until 180 days from the date of this Order.

All existing terms and conditions of Licenses 11395 and 11396 remain in effect, except as temporarily amended by the following terms.

1. Licenses 11395 and 11396 shall be modified such that Provision III of the October 8, 1959 Agreement between MID and CDFW shall be temporarily amended as follows:

During April and May 2015, MID shall maintain an instantaneous flow at no less than 40 cfs in Merced River at Shaffer Bridge.

2. Licenses 11395 and 11396 shall be modified such that Provision IV of the October 8, 1959 Agreement between MID and CDFW shall be temporarily amended as follows:

For the period of April 1, 2015 through October 31, 2015, MID shall be relieved from maintaining a minimum pool of 115,000 af in Lake McClure for the purpose of meeting LDPCSD's health and safety needs. The amount beneficially used shall not exceed 600 af with the total annual beneficial use not to exceed the total amount authorized under License 11395.

3. License 11395 requires that "...the Licensee will provide 12,500 af of additional water in the month of October in all years as measured above its current requirement of 2,350 af or 3,124 af defined in the Federal Energy Regulatory Commission license for the Exchequer Merced River Project." This term is temporarily not in effect contingent upon MID obtaining a written confirmation of concurrence from CDFW by October 1, 2015. Copy of the confirmation shall be provided to the Deputy Director of Water Rights no later than October 5, 2015.
4. MID shall monitor flow of the Merced River at Shaffer Bridge gauge in hourly increments through May 31, 2015 and submit the flow data by June 5, 2015 to the State Water Board and CDFW.
5. MID shall report to the State Water Board and CDFW the daily inflow and releases at Lake McClure and report the data at the end of each month through October 31, 2015. The release information must include the total quantity (in af) released from Lake McClure as well as the quantity (in af) of releases made to each MID's North and Main Canals, the Cowell Diverters, and minimum instream flows required by FERC.
6. During the term of this Order, to the extent CDFW determines to move forward with fish monitoring, studies, or other such related activities downstream of Crocker Huffman Diversion Dam, MID shall provide access across MID's property adjacent to the Merced River below Crocker Huffman Diversion Dam at such locations as requested by CDFW to accommodate the effort.
7. MID shall submit evidence of compliance of LDPCSD with any future regulatory framework (FRF) implementing the conservation requirements of the Governor's April 1, 2015 executive Order or water demand reduction plan (Plan) for LDPCSD's water customers.
 - 1) If LDPCSD is subject to compliance with the FRF, MID shall submit written confirmation to the Deputy Director of Water Rights within 15 days of the effective date of the FRF. Separate from any reporting requirements of the FRF, MID shall provide reporting for the purposes of this urgency change on a monthly basis within 15 days of the end of each month. MID shall provide a final report no later than 15 days from the expiration date of this Order.
 - 2) If LDPCSD is not subject to compliance with the FRF, within 30 days of the date of this Order, MID shall submit a Plan to ensure that LDPCSD will meet a water demand reduction of a minimum of 25% as compared to the 2013 baseline water demand. The Plan shall define baseline water demand as appropriate for LDPCSD's situation based on considerations such as weather, economy, or other relevant information. Following approval of the Plan, MID shall report on LDPCSD's monthly and cumulative amount of water demand reduction, within 15 days of the end of each month. MID shall provide a final report no later than 15 days from the expiration date of this Order.

Upon receipt of demand reduction data, MID shall immediately inform the Deputy Director of Water Rights in the event that LDPCSD is not meeting the requirements of this term.

This term shall not be construed to suggest that LDPCSD is able to disregard or otherwise not comply with any applicable requirements under the FRF.

8. During the period of this Order, MID shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by MID.

9. Use of water under this Order is contingent on compliance with the following: (a) urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.), and (b) agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.), including all water conservation requirements therein.
10. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this Order, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Board in accordance with law and in the interest of public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water. The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in the Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
11. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the licensee shall obtain authorization for any incidental take prior to commencing transfer of water. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
12. The State Water Board reserves jurisdiction to supervise the temporary urgency changes under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.
13. The temporary urgency changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the Board. The temporary urgency changes approved in this Order shall automatically expire 180 days after the date of its issuance or unless it has been revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JOHN O'HAGAN FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAY 12 2015